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IN THE

Supreme Court of the United States

BARBARA GRUTTER,
Petitioner,

v.

LEE BOLLINGER, JEFFREY LEHMAN, DENNIS SHIELDS, AND THE BOARD OF REGENTS OF THE UNIVERSITY OF MICHIGAN,
Respondents.

JENNIFER GRATZ AND PATRICK HAMACHER,
Petitioners,

v.

LEE BOLLINGER, JAMES J. DUDERSTADT, AND THE BOARD OF REGENTS OF THE UNIVERSITY OF MICHIGAN,
Respondents.

On Writs of Certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF OF AMICI CURIAE MEDIA COMPANIES IN SUPPORT OF RESPONDENTS

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LIST OF AMICI

This brief is filed on behalf of the following businesses:

Banks Broadcasting, Inc.
Brunson Communications
ChaseCom, LLP
El Dorado Communications
Emmis Communications Corp.
Essence Communication Partners
Granite Broadcasting Corp.
Hispanic Broadcasting Corp.
K-B Prime Media, LLC
La Favorita Broadcasting, Inc.
LIN-Television Corp.
Mariner Broadcasters, Inc.
Northpoint Technology Ltd.
Radio One, Inc.
Stop 26-Riverbend, Inc.
Susquehanna Radio Corp.
Waters Broadcasting Corp.
Yankees Entertainment and Sports Network, LLC

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WASHINGTON POST/KAISER FAMILY FOUNDATION/HARVARD UNIVERSITY, RACE AND ETHNICITY IN 2001: ATTITUDES, PERCEPTIONS, AND EXPERIENCES (August, 2001) *at* http://www.mphaweb.org/RacialBiracialToplines.pdf 7

INTEREST OF AMICI CURIAE[1]

Amici are television, radio, print and cable media companies, with workforces ranging from eight to over three thousand employees. Some of the *amici* are minority-owned. All target audiences that include substantial minority communities. All of the *amici* endeavor to be racially diverse, but view increased diversity as essential to the success of their businesses and to the public interest. *Amici* have a vital interest in the issues before the Court, because the outcome of these cases will affect *amici*'s ability to recruit a diverse and talented workforce that values the many racial, cultural and ethnic differences reflected in the nation's communities.

All of the *amici* hire recent college and university graduates for entry-level positions and promote entry level hires into supervisory and managerial positions. Several of the *amici* recruit at the University of Michigan and other public universities, including Indiana University, Arizona State University, and the University of Virginia. *Amici* actively seek minority applicants through contact with organizations representing minorities, such as the National Association of Black Journalists, the National Association of Hispanic Journalists and the Asian American Journalists Association, through advertisement with minority job placement organizations and participation in job fairs, and

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[1] All parties have consented to the filing of this *amicus curiae* brief. No portion of the brief was authored by counsel for a party. No person or entity other than the *amici* signing this brief or their counsel made a monetary contribution to the preparation or submission of the brief.

through scholarships, internships and mentorships aimed at minorities. Through these efforts, *amici* have increased the diversity of their workforces, both managerial and non-managerial.

It is essential to *amici* that the University of Michigan and other leading universities be able to take race and ethnic background into consideration in their admissions decisions. *Amici* are in the business of communication. Their success, and the future of this country, depend on *amici*'s ability to communicate with people and communities reflecting increasingly diverse racial and ethnic backgrounds. *Amici* need talented college graduates, minority and non-minority, who have been educated in an environment that reflects the nation's diversity. These graduates will enter *amici*'s workforces and become the managers of the future. The Court's decision on the constitutionality of the admissions programs at the University of Michigan will have a profound impact on the makeup of that workforce.

SUMMARY OF THE ARGUMENT

Amici media companies play a vital role as the vehicle for the exchange of information and ideas in this country. The public welfare depends on *amici*'s ability to engage individuals from all aspects of our multi-faceted nation in debate on the complex issues confronting us. *Amici* urge the Court to find that diversity in higher education is a compelling governmental interest and that the University of Michigan's admissions programs are narrowly tailored to serve that compelling interest. This holding is essential to *amici*'s success and to the public interest.

The nation's colleges and universities provide the pool from which *amici*'s workforces are drawn. These graduates will become the managers of *amici*'s businesses. It is

essential to *amici*'s ability to communicate effectively both that there be a large pool of qualified minority applicants and that all of the graduates, minority and non-minority, have been educated to value each other's differences.

The public interest also is served when *amici*'s workforces reflect the nation's diversity. Individuals whose backgrounds and life experiences are different from the majority add to the public debate, because they bring different perspectives to bear on important issues. In addition, precisely because minority viewpoints are not monolithic, it is important for the media to include more than a token representation of minorities. Access to this broad spectrum of viewpoints both enriches the exchange of information and breaks down stereotypical assumptions about minority perspectives.

Amici are working to improve the diversity of their workforces and to support minority employees as they develop and move into management positions. Despite the efforts of *amici* and others in the industry, minority representation in the media falls far short of the goal of reflecting the diversity of the communities *amici* serve. Programs such as those at the University of Michigan are necessary to *amici*'s ability to hire and retain talented minority employees in a workforce that responds to the concerns of individuals of different backgrounds.

Amici do not need token representation of minorities in their workforces. They need talented minority and non-minority graduates who have been educated in an environment like that of University of Michigan, where differences in racial and ethnic background are valued because they add to the richness of the educational experience and to the students' preparation to contribute to the national and international exchange of ideas.

ARGUMENT

In 1978, Justice Powell recognized that our "`nation's future depends upon leaders trained through wide exposure' to the ideas and mores of students as diverse as this Nation of many peoples." *Regents of the University of California v. Bakke*, 438 U.S. 265, 313 (1978)(opinion of Powell, J.)(quoting *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967)). Justice Powell's words are equally, if not more, true today than they were in 1978. The complexity of the domestic and international issues facing us twenty five years after *Bakke* requires that everyone in our multi-faceted nation be represented and engaged in the national debate on these issues.

Amici media companies are particularly aware of the wisdom of Justice Powell's judgment. *Amici* are a critical vehicle for the exchange of ideas and information that forms the basis for national dialogue. We urge the Court to confirm that diversity is a compelling governmental interest and that practices like those employed by the University of Michigan to enhance diversity are sufficiently narrowly tailored to foster this compelling interest. Without such a finding, *amici*'s ability to attract and retain a workforce that reflects and values the nation's diversity will be impaired and the meaningful exchange of ideas and information among all segments of our population will be harmed.

It is *amici*'s job to communicate – to be the vehicle for the exchange of information and ideas. *Amici* perform that job as "fiduciaries for the public," *FCC v. League of Women Voters*, 468 U.S. 364, 377 (1984), whose welfare depends on "the widest possible dissemination of information from diverse and antagonistic sources." *Associated Press v. United States*, 326 U.S. 1, 20 (1945).

For two reasons, diversity in higher education is essential to *amici*'s ability to communicate effectively and thus to serve the public interest. First, diversity in higher education enables *amici* to hire talented college graduates from diverse racial and ethnic backgrounds. *Amici* increasingly need such a workforce in order to communicate effectively with the audiences to whom they address their programming. Second, diversity in higher education produces a workforce of minorities and non-minorities who have been educated to understand and value the racial and ethnic differences reflected in our communities. Both of these results are necessary to the success of *amici*'s businesses and to the public interest in the widest possible exchange of information and ideas.

From a purely business perspective, a diverse workforce is essential to *amici*'s success. Communication is not a one-way dissemination of information. Communication requires a listening audience. The communities served by the media increasingly reflect multiple racial and ethnic backgrounds. Individuals in these communities are likely to choose a broadcast station or newspaper where the programming reflects the diversity of the community. See Siegelman,P. & Waldfogel, J., Race and Radio: Preference Externalities, Minority Ownership, and the Provision of Programming to Minorities (study filed with the FCC, October 24, 2001)(minorities listen to minority targeted stations), at *http://www.fcc.gov/ownership/roundtable-docs/waldfogel-c.pdf*. Individuals also are likely to discuss their thoughts and concerns with someone who shares their cultural background and speaks their language, or with someone who has learned to communicate easily across racial, ethnic and ideological lines. See Bill Dedman, *Newspapers Fall Short of Diversity Goal*, BOSTON GLOBE, April 11, 2002 (editors surveyed by Boston Globe report that

diversity "improves awareness of what's going on in the community . . . [and] enhances credibility, especially among minorities"), *available at* http://www.boston.com/asne.

A diverse media workforce also serves the public interest. The broadcast and print media shape public debate by identifying issues and asking questions. Individuals whose backgrounds and life experiences are different from the majority add to the public debate, not simply because they have different ideas, but because they ask different questions. There is evidence, for instance, that the increased representation of women in the media has expanded the range of issues presented for public debate. INTERNATIONAL WOMEN'S MEDIA FOUNDATION, LEADING IN A DIFFERENT LANGUAGE: WILL WOMEN CHANGE THE NEWS MEDIA?, DIFFERENT PERSPECTIVES (2000)(IWMF Report) (women have changed the definition of news; domestic violence, education and other "women's issues" are now issues of general interest; Russian editors report that women war correspondents in Russia have changed the type of report from the field and had an impact on politicians), *available at* http:// www.iwmf.org/pub.

Just as there is no "Black viewpoint," "Asian viewpoint" or "Arab viewpoint" on a given issue, *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547, 615 (1990) (O'Connor, J., dissenting), there is no "women's viewpoint," but the increased presence of women in the industry has made the public exchange richer. Similarly, leaders in the media industry have recognized that minority journalists may "look at government in a different way," and are working to encourage those different perspectives. Caroline Garcia, *Diversity and Making a Difference*, AMERICAN SOCIETY OF NEWSPAPER EDITORS (reporting on meeting of two dozen editors at Freedom Forum Diversity Institute), *at* http:// www.asne.org/index.cfm?id=3644 (June 17, 2002).

Minority views are not monolithic, nor are minority program choices. Precisely for that reason, it is important to have more than token representation of minority groups in the media industry. Full participation of minorities in the industry ensures that a full range of perspectives and program choices may be heard, within racial and cultural groups, as well as across racial and cultural lines. Presenting that range of ideas and choices, from a group of people highly visible to the community, breaks down racial stereotypes. *See* WASHINGTON POST/KAISER FAMILY FOUNDATION/HARVARD UNIVERSITY, RACE AND ETHNICITY IN 2001: ATTITUDES, PERCEPTIONS, AND EXPERIENCES (August, 2001) (study finding that high percentage of Americans get information about different racial and ethnic groups from the media), *at* http://www.mphaweb.org/RacialBiracialToplines.pdf. Racial stereotypes also are broken down by accurate portrayals of minorities in the media. That accuracy is linked directly to the media company's commitment to diversity. Doug White, *Newsroom Diversity Attitudes Affect Content*, AMERICAN SOCIETY OF NEWSPAPER EDITORS, *at* http://www.asne.org/index.cfm?Id=3608 (June 12, 2002).

A diversity of ideas and backgrounds has the most impact in the media at supervisory and management levels. A diverse pool of qualified college graduates ready to enter the industry is a necessary and important step toward increased minority participation in these positions. *See* Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of the EEO Streamlining Proceeding, 15 FCC Rcd. 2329, 2347 ¶46 (2000), *reconsideration denied*, 15 FCC Rcd 22548 (2000), *reversed and remanded in part on other grounds sub nom. MD/DC/DE Broadcasters Ass'n. v. FCC*, 236 F.3d 13, *petition for hearing and rehearing en banc denied*, 253 F.3d

732 (D.C. Cir. 2001), *cert. denied sub nom. Minority Media and Telecommunications Council v. FCC*, 534 U.S. 1113 (2002) (citing affidavits from broadcast owners that they or their colleagues started in entry-level or internship positions); *id.* at 2355-56 n.121(citing Declaration of W. Don Cornwell, Chair, Granite Broadcasting Co., that virtually all managers at his broadcasting company got their start in entry level positions). Educating university students to appreciate each other's differences also furthers this goal, because individuals from diverse backgrounds are more likely to remain in the industry if they are in a workforce where their differences are valued. *See* Caroline Garcia, *Diversity and Making a Difference*, AMERICAN SOCIETY OF NEWSPAPER EDITORS (more journalists of color left the industry last year than were hired; editors' appreciation of different backgrounds and perspectives needed for retention), *at* http://www.asne.org/index.cfm?id=3644 (June 17, 2002).

Amici and others in the media industry have instituted programs to find qualified minority employees and equip them to move into management positions. *Amicus* LIN Television sponsors a minority scholarship and training program, which includes payment of college expenses and part-time employment during college as an intern at LIN. *Amicus* Emmis Communications offers a minority internship program and is in the process of fortifying its minority recruitment and development efforts by launching a Diversity Fellowship Program later this year. The National Association of Minority Media Executives ("NAMME") administers the McCormick Fellowship Initiative, which pairs executives of color in the media industry with mentors, sends them to executive development programs and conducts annual progress surveys. NAMME also partners with executives in the media industry, minority and non-minority, to offer a three-day Leadership Development Institute for new and middle managers of color. The National Association of

Broadcasters also has a leadership program to help prepare minorities in the industry become station owners.

Statistics on minorities in the media are not encouraging. Twenty five years ago, the American Society of Newspaper Editors set a goal of having newsrooms as diverse as the communities they serve. That diversity has yet to be reached, in the print or broadcast industry. In 2001, minorities were 31% of the U.S. population, but made up 12% of newsroom employees. Bill Dedman, *Newspapers Fall Short of Diversity Goal*, BOSTON GLOBE, April 11, 2002 (reporting on 2001 Globe survey), *available at* http://www.boston.com/asne. In 2002, minorities made up only 20.6% of the television workforce and 8% of the radio workforce. RADIO-TELEVISION NEWS DIRECTORS ASSOCIATION & FOUNDATION, 2002 WOMEN AND MINORITIES SURVEY, *at* http://www.rtnda.org/research/womin.shtml.

Education and talent are key to success in the media industry. It is vitally important to *amici* and to the public interest that talented individuals of diverse racial and ethnic backgrounds be included in the mix of students at the nation's best colleges and universities. *Amici* do not need token representation of minorities. They need the brightest, most qualified candidates, both minority and non-minority. They need talented graduates who have been educated in an environment where they were constantly challenged to understand and value the racial and ethnic differences that reflect our nation's population.

Amici urge the Court to hold that diversity in higher education is a compelling governmental interest that allows consideration of racial and ethnic origin in university admissions. This holding does not require a stereotypical assumption that skin color determines what one thinks and

believes. It requires only the recognition that racial and ethnic background is one of the "differences" that make our country rich and that learning to value those differences is an educational experience on which the future of our country depends. The experience of *amici* and others in the media demonstrates that while bringing together people from different racial and ethnic backgrounds does not guarantee that any particular viewpoint will be expressed, it does make it very likely that those involved in the exchange will come away with new questions and broader perspectives.

Amici also urge the Court to conclude that the University of Michigan's admissions programs, which take race and ethnic origin into consideration as one of the factors bearing on an applicant's admission, are narrowly tailored to serve this compelling interest. The programs accomplish the goal of creating a rich learning environment more effectively than "race neutral" programs that sweep in some minority students, but ignore the many other factors that bear on the appropriateness of the student for admission. The University of Michigan admissions programs treat each student as an individual whose racial and ethnic background is one factor that bears on the student's likely contribution to a rich educational experience for all involved and on his or her likely value as a future employee, manager or owner in industries like those of *amici*.

CONCLUSION

The Court should find that diversity in higher education is a compelling governmental interest, and that the University of Michigan's admissions programs are narrowly tailored to serve this compelling interest.

Respectfully submitted,

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